Ramana Dayaram Shetty

Vs

International Airport Authority of India and Others

Civil Appeal No. 895 of 1978

(P. N. Bhagwati, V. D. Tulzapurkar, R. S. Pathak JJ)

04.05.1979

JUDGMENT

BHAGWATI, J. –

1. This appeal by special leave raises interesting questions of law in the area of public law. What are the constitutional obligations on the State when it takes action in exercise of its statutory or executive power ? Is the State entitled to deal with its property in any manner it likes or award a contract to any person it chooses without any constitutional limitations upon it ? What are the parameters of its statutory or executive power in the matter of awarding a contract or dealing with its property ? These questions fall in the sphere of both administrative law and constitutional law and they assume special significance in a modern welfare State which is committed to egalitarian values and dedicated to the rule of law. But these questions cannot be decided in the abstract. They can be determined only against the background of facts and hence we shall proceed to state the facts giving rise to the appeal.

2. On or about January 3, 1977 a notice inviting tenders for putting up and running a second class restaurant and two snack bars at the International Airport at Bombay was issued by respondent 1 which is a corporate body constituted under the International Airport Authority Act, 43 of 1971. The notice stated in the clearest terms in paragraph (1) that "sealed tenders in the prescribed form are hereby invited from Registered IInd Class having at least 5 years' experience for putting up and running a IInd Class Restaurant and two Snack Bars at this airport for a period of 3 years". The latest point of time up to which the tenders could be submitted to respondent 1 was stipulated in paragraph 7 of the notice to be 12 p.m. on January 25, 1977 and it was provided that the tenders would be opened on the same date at 12.30 hours. Paragraph (8) of the notice made it clear that "the acceptance of the tender will rest with the Airport Director who does not bind himself to accept any tender and reserves to himself the right to reject all or any of the tenders received without assigning any reasons therefor". There were six tenders received by respondent 1 in response to the notice and one of them was from respondents 4 offering a licence fee of Rs. 6666.66 per month, and the others were from Cafe Mahim, Central Catering Service, one A. S. Irani, Cafe Seaside and Cafe Excelsior offering progressively decreasing licence fee very much lower than that offered by respondents 4. The tenders were opened in the office of the Airport Director at 12.30 p.m. on January 25, 1977 and at that time respondents 4 were represented by their sole proprietor Kumaria, A. S. Irani was present on behalf of himself, Cafe Mahim, Cafe Seaside and Cafe Excelsior and there was one representative of Central Catering Service. The tenders of Cafe Mahim, Central Catering Service, Cafe Seaside and Cafe Excelsior were not complete since they were not accompanied by the respective income tax certificates, affidavits of immovable property and solvency certificates, as required by clause (9) of the terms and conditions of the tender form. The tender of A. S. Irani was

also not complete as it was not accompanied by an affidavit of immovable property held by him and solvency certificates. The only tender which was complete and fully complied with the terms and conditions of the tender form was that of respondents 4 and the offer contained in that tender was also the highest amongst all the tenders. Now it is necessary to point out at this stage that while submitting their tender respondents 4 had pointed out in their letter dated January 24, 1977 addressed to the Airport Director that they had 10 years' experience in catering to reputed commercial houses, training centres, banks and factories and that they were also doing considerable outdoor catering work for various institutions. This letter showed that respondents 4 had experience only of running canteens and not restaurants and it appeared that they did not satisfy the description of "registered IInd Class hotelier having at least 5 years' experience" as set out in paragraph (1) of the notice inviting tenders. The Airport Officer, therefore, by his letter dated February 15, 1977 requested respondents 4 to inform by return of post whether they were "a registered IInd Class hotelier having at least 5 years' experience" and to produce documentary evidence in this respect within 7 days. Respondents 4 pointed out to the Airport Officer by their letter dated February 22, 1977 that they had, in addition to what was set out in their earlier letter dated January 24, 1977, experience of running canteens for Phillips India Ltd. and Indian Oil Corporation and moreover, they held Eating House Licence granted by the Bombay Municipal Corporation since 1973 and had thus experience of 10 years in the catering line. It appears that before this letter of respondents 4 could reach the Airport Officer, another letter dated February 22, 1977 was addressed by the Airport Officer, another letter dated February 22, 1977 was addressed by the Airport Officer once again requesting respondents 4 to produce documentary evidence to show if they were "a registered IInd Class hotelier having at least 5 years' experience". Respondents 4 thereupon addressed another letter dated February 25, 1977 to the Director pointing out that they had considerable experience of catering for various reputed commercial houses, clubs, messes and banks and they also held an Eating House Catering Establishment (Canteen) Licence as also a licence issued under the Prevention of Food Adulteration Act. Respondents 4 stated that their sole proprietor Kumaria had started his career in catering line in the year 1962 at Hotel Janpath, Delhi and gradually risen to his present position and that he had accordingly "experience equivalent to that of a IInd Class or even 1st Class hotelier". This position was reiterated by respondents 4 in a further letter dated March 3, 1977 addressed to the Director. This information given by respondents 4 appeared to satisfy respondent 1 and by a letter dated April 19, 1977 respondent 1 accepted the tender of respondents 4 on the terms and conditions set out in that letter. Respondents 4 accepted these terms and conditions by their letter dated April 23, 1977 and deposited with respondent 1 by way of security a sum of Rs. 39,999.96 in the form of Fixed Deposit Receipts in favour of respondent 1 and paid respondent 1 a sum of Rs. 6666.66 representing licence fee for one month and other amounts representing water, electricity and conservancy charges. Respondents 4 thereafter executed and handed over to respondent 1 and agreement in the form attached to the tender on May 1, 1977. Respondents 4 also got prepared furniture, counters and show cases as also uniforms for the staff, purchased inter alia deep freezers, water coolers, electrical appliances, ice-cream cabinets, expresso coffee machines, crockery, cutlery and other articles and things and also engaged the necessary staff for the purpose of running the restaurant and the two snack bars. But respondent 1 could not hand over possession of the requisite sites of respondents 4, since A. S. Irani was running his restaurant and snack bars on these sites under a previous contract with respondent 1 and though that contract had come to an end, A. S. Irani was did not deliver possession of these sites to respondent 1. Respondents 3 repeatedly requested respondent 1 and the Airport Director who is respondent 2 in the appeal, to hand over possession of the sites and pointed out to them that respondents 4 were incurring losses by reason of delay in delivery of possession, but on account of the intransigence of A. S. Irani respondent 1 could not arrange to hand over possession of the sites to respondents 4.

3. Meanwhile one K. S. Irani who owned Cafe Excelsior filed suit No. 6544 of 1977 in the City Civil Court, Bombay against the respondents challenging the decision of respondent 1 to accept the tender of respondents 4 and took out a notice of motion for restraining respondent 1 from taking any further steps pursuant to the acceptance of the tender. K. S. Irani obtained an ad interim injunction against the respondents but after hearing the respondents, the City Civil Court vacated the ad interim injunction and dismissed the notice of motion by an order dated October 10, 1977. An appeal was preferred by K. S. Irani against this order, but the appeal was dismissed by the High Court on October 19, 1977. Immediately thereafter, on the same day, respondent 1 handed over possession of two sites to respondents 4 and respondents 4 proceeded to set up snack bars on the two sites and started business of catering at the two snack bars. These two sites handed over to respondents 4 were different from the sites occupied by A. S. Irani, because A. S. Irani refused to vacate the sites in his occupation. So far as the site for the restaurant was concerned, respondent 1 could not hand over the possession of it to respondents 3 presumably because there was no other appropriate site available other than the one occupied by A. S. Irani. Since A. S. Irani refused to hand over possession of the sites occupied by him to respondent 1, even though his contract had come to an end, and continued to carry on the business of running the restaurant and the snack bars on these sites, respondent 1 was constrained to file suit No. 8032 of 1977 against A. S. Irani in the City Civil Court at Bombay and in that suit, an injunction was obtained by respondent 1 restarting A. S. Irani from running or conducting the restaurant and the snack bars or from entering the premises save and except for winding up the restaurant and the snack bars. A. S. Irani preferred an appeal against the order granting the injunction, but the appeal was rejected and ultimately a petition for special leave to appeal to this Court was also turned down on July 31, 1978.

4. This was, however, not to be the end of the travails of respondents 4, for, as soon as the appeal preferred by K. S. Irani against the order dismissing his notice of motion was rejected by the High Court on October 19, 1977, A. S. Irani filed another suit being suit No. 8161 of 1977 in the City Civil Court, Bombay on October 24, 1977 seeking mandatory injunction for removal of the two snack bars put up by the respondents 4. This was one more attempt by A. S. Irani to prevent respondents 4 from obtaining the benefit of the contract awarded to them by respondent 1. He, however, did not succeed in obtaining ad interim injunction and we are told that the notice of motion taken out by him is still pending in the City Civil Court.

5. It will thus be seen that A. S. Irani failed in his attempts to prevent respondents 4 from obtaining the contract and enjoying its benefit. Respondents 4 put up two snack bars on the sites provided by respondent 1 and started running the two snack bars from October 19, 1977. The restaurant however, could not be put up on account of the inability of respondent 1 to provide appropriate site to respondents 4 and, therefore, the licence fee for the two snack bars had to be settled and it was fixed at Rs. 4,500 per month by mutual agreement between the parties. But it seems that respondents 4 were not destined to be left in peace to run the two snack bars and soon after the dismissal of the appeal of A. S. Irani on October 19, 1977 and the failure of A. S. Irani to obtain an ad interim mandatory injunction in the suit filed by him against respondents 1 and 4, the appellant filed writ petition No. 1582 of 1977 in the High Court of Bombay challenging the decision of respondent 1 to accept the tender of respondents 4. The writ petition was moved before a Single Judge of the High Court on November 8, 1977 after giving prior notice to the respondents and after hearing the parties, the learned Single Judge summarily rejected the writ petition. The appellant preferred an appeal to the Division Bench of the High Court against the order rejecting the writ petition and on notice being issued by the Division Bench, respondents 1 and 4 filed their respective affidavits in reply showing cause against the admission of the appeal. The Division Bench after considering the affidavits and hearing the parties rejected the appeal in limine of February 21, 1978.

The appellant thereupon filed a petition for special leave to appeal to this Court and since it was felt that the questions raised in the appeal were of seminal importance, this Court granted special leave and decided to hear the appeal at an early date after giving a further opportunity to the parties to file their respective affidavits. That is how the appeal has now come before us for final hearing with full and adequate material pieces before us on behalf of both the parties.

6. The main contention urged on behalf of the appellant was that in paragraph (1) of the notice inviting tenders respondent 1 had stipulated a condition of eligibility by providing that a person submitting a tender must be a "registered IInd Class hotelier having at least 5 years' experience". This was a condition of eligibility to be satisfied by every person submitting a tender and if in case of any person, this condition was not satisfied, his tender was ineligible for being considered. Respondent 1, being a State within the meaning of Article 12 of the Constitution or in any event a public authority, was bound to give effect to the condition of eligibility set up by it and was not entitled to depart from it at its own sweet will without rational justification. Respondents 4 had experience of catering only in canteens and did not have 5 years' experience of running a IInd class hotel or restaurant and hence they did not satisfy the condition of eligibility and yet respondent 1 accepted the tender submitted by them. This was clearly in violation of the standard or norm of eligibility set up by respondent 1 and the action of respondent 1 in accepting the tender of respondents 4 was clearly invalid. Such a departure from the standard or norm of eligibility had the effect of denying equal opportunity to the appellant and others of submitting their tenders and being considered for entering into contract for putting up and running the restaurant and two snack bars. The appellant too was not a registered IInd class hotelier with 5 year's experience and was in the same position as respondents 4 vis-a-vis this condition of eligibility and he also could have submitted his tender and entered the field of consideration for award of the contract, but he did not do so because of this condition of eligibility which he admittedly did not satisfy. The action of respondent 1 in accepting the tender of respondents 4 had, therefore, the effect of denying him quality of opportunity in the matter of consideration for award of the contract and hence it was unconstitutional as being in violation of the equality clause. This contention of the appellant was sought to be met by a threefold argument on behalf of respondent 1 and 4. The first head of the argument was that grading is given by the Bombay City Municipal Corporation only to hotels or restaurants and not persons running them and hence there can be a IInd grade hotel or restaurant but not a IInd grade hotelier and the requirement in paragraph (1) of the notice that a tenderer must be a registered IInd grade hotelier was therefore a meaningless requirement and it could not be regarded as laying down any condition of eligibility. It was also urged that in any event what paragraph (1) of the notice required was not that a person tendering must have 5 years' experience of running a IInd grade hotel, but he should have sufficient experience of running a IInd grade hotel and respondents 4 were fully qualified in this respect since they had over 10 year's experience in catering to canteens of well known companies, clubs and banks. It was further contended in the alternative that paragraph (8) of the notice clearly provided that the acceptance of the tender would rest with the Airport Director who did not bind himself to accept any tender any reserved to himself the right to reject all or any of the tenders without assigning any reasons therefor and it was, therefore, competent to respondent 1 to reject all the tenders and to negotiate with any person it considered fit to enter into a contract and this is in effect and substance what respondent 1 did when he accepted the tender of respondents 4. The second head of argument was that paragraph (1) of the notice setting out the condition of eligibility had no statutory force nor was it issued under any administrative rules and, therefore, even if there was any departure from the standard or norm of eligibility set out in that paragraph, it was not justiciable and did not furnish any cause of action to the appellant. It was competent to respondent 1 to give the contract to any one it thought fit and it

was not bound by the standard or norm of eligibility set out in paragraph (1) of the notice. It was submitted that in any event the appellant had no right to complain that respondent 1 had given the contract to respondents 4 in breach of the condition of eligibility laid down in paragraph (1) of the notice. And lastly, under the third head of argument, it was submitted on behalf of the respondents 1 and 4 that in any view of the matter, the writ petition of the appellant was liable to be rejected in the exercise of its discretion by the Court, the appellant had no real interest but was merely a nominee of A. S. Irani who had been putting up one person after another to start litigation with a view to preventing the award of the contract to respondents 4. The appellant was also guilty of laches and delay in filing the writ petition and the High Court was justified in rejecting the writ petition in limine particularly in view of the fact that during the period in between the date of acceptance of the tender and the date of filing of the writ petition, respondents 4 had spent an aggregate sum of about Rs. 1,25,000 in making arrangements for putting up the restaurant and two snack bars. These were the rival contentions urged on behalf of the parties and we shall now proceed to discuss them in the order in which we have set them out.

7. Now it is clear from paragraph (1) of the notice that tenders were invited only from "registered IInd Class hoteliers having at least 5 years' experience". It is only if a person was a registered IInd Class hotelier having at least 5 years' experience that he could, on the terms of paragraph (1) of the notice, submit a tender. Paragraph (1) of the notice prescribed a condition of eligibility which had to be satisfied by every person submitting a tender and if, in a given case, a person submitting a tender did not satisfy this condition, his tender was not eligible to be considered. Now it is true that the terms and conditions of the tender form did not prescribe that the tenderer must be a registered IInd Class hotelier having at least 5 years' experience nor was any such stipulation to be found in the form of the agreement annexed to the tender but the notice inviting tenders published in the newspapers clearly stipulated that tenders may be submitted only by registered IInd Class hotelier having at least 5 years' experience and this tender notice was also included amongst the documents handed over to prospective tenderers when they applied for tender forms. Now the question is, what is the meaning of the expression "registered IInd Class hotelier", what category of persons fall within the meaning of this description ? This is a necessary enquiry in order to determine whether respondents 4 were eligible to submit a tender. It is clear from the affidavits and indeed there was no dispute about it that different grades are given by the Bombay City Municipal Corporation to hotels and restaurants and, therefore, there may be a registered IInd Class hotel but no such grades are given to persons running hotels and restaurants and hence it would be inappropriate to speak of a person as a registered IInd Class hotelier. But on that account would it be right to reject the expression "registered IInd Class hotelier" as meaningless and deprive paragraph (1) of the notice of any meaning and effect. We do not think such a view would be justified by any canon of construction. It is a well settled rule of interpretation applicable alike to documents as to statutes that, save for compelling necessity, the Court should not be prompt to ascribe superfluity to the language of a document "and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use". To reject words as insensible should be the last resort of judicial interpretation, for it is an elementary rule based on common sense that no author of a formal document intended to be acted upon by the others should be presumed to use words without a meaning. The court must, as far as possible, avoid a construction which would render the words used by the author of the document meaningless and futile or reduce to silence any part of the document and make it altogether inapplicable. Now, here the expression used in paragraph (1) of the notice was "registered IInd Class hotelier" and there can be no doubt that by using this expression respondent 1 intended to delineate a certain category of persons who alone should be eligible to submit a tender. Respondent 1 was not acting aimlessly or insensibly in insisting upon this

requirement nor was it indulging in a meaningless and futile exercise. It had a definite purpose in view when it laid down this condition of eligibility in paragraph (1) of the notice. It is true that the phraseology used by respondent 1 to express its intention was rather inapt but it is obvious from the context that the expression "registered IInd Class hotelier" was loosely used to denote a person conducting or running a IInd Class hotel or restaurant. It may be ungrammatical but it does not offend common sense to describe a person running a registered IInd grade hotel as a registered IInd grade hotelier. This meaning is quite reasonable and does not do any violence to the language and makes sense of the provision contained in paragraph (1) of the notice. We must, in the circumstances, hold that, on a proper construction, what paragraph (1) of the notice required was that only a person running a registered IInd Class hotel or restaurant and having at least 5 years' experience as such should be eligible to submit a tender. This was a condition of eligibility and it is difficult to see how this condition could be said to be satisfied by any person who did not have five years' experience of running a IInd Class hotel or restaurant. The test of eligibility laid down was an objective test and not a subjective one. What the condition of eligibility required was that the person submitting a tender must have 5 years' experience of running a IInd Class hotel as this would ensure by an objective test that he was capable of running a IInd class restaurant and it should not be left to respondent 1 to decide in its subjective discretion that the person tendering was capable of running such a restaurant. If, therefore, a person submitting a tender did not have at least 5 years' experience of running a IInd Class hotel, he was not eligible to submit the tender and it would not avail him to say that though he did not satisfy this condition, he was otherwise capable of running a IInd Class restaurant and should, therefore, be considered. This was in fact how respondent 1 itself understood this condition of eligibility. When respondents 4 submitted their tender along with their letter dated January 24, 1977 and it appeared from the documents submitted by respondents 4 that they did not have 5 years' experience of running of IInd Class restaurant, respondent 1 by its letter dated February 15, 1977 required the respondents 4 to produce documentary evidence to show that they were "registered IInd Class hotelier having at least 5 years' experience". Respondent 1 did not regard this requirement of eligibility as meaningless or unnecessary and wanted to be satisfied that respondents 4 did fulfil this requirement. Now, unfortunately for respondents 4, they had over 10 years' experience of running canteens but at the date when they submitted their tender, they were not running a IInd grade hotel or restaurant nor did they have 5 years' experience of running such a hotel or restaurant. Even if the experience of respondents 4 in the catering line were taken into account from 1962 onwards, it would not cover a total period of more than 4 years 2 months so far as catering experience in IInd grade hotels and restaurants is concerned. Respondents 4 thus did not satisfy the condition of eligibility laid down in paragraph (1) of the notice and in fact this was impliedly conceded by respondents 4 in their letter dated February 26, 1977 where they stated that they had "experience equivalent to that of a IInd Class or even 1st Class hotelier". Respondents 4 were, accordingly, not eligible for submitting a tender and the action of respondent 1 in accepting their tender was in contravention of paragraph (1) of the notice.

8. It was suggested on behalf of the respondent 1 and 4 that there was nothing wrong in respondent 1 giving the contract to respondents 4 since it was competent to respondent 1 to reject all the tenders received by it and to negotiate directly with respondents 4 for giving them the contract and it made no difference that instead of following this procedure, which perhaps might have resulted in respondents 4 offering a smaller licence free and respondents 1 suffering a loss in the process, respondent 1 accepted the tender of respondents 4. We do not think there is any force in this argument. It is true that there was no statutory or administrative rule requiring respondent 1 to give a contract only by inviting tenders and hence respondent 1 was entitled to reject all the tenders and, subject to the constitutional norm laid down in Article 14, negotiate directly for entering into a

contract. Paragraph (8) of the notice also made it clear that respondent 1 was not bound to accept any tender and could reject all the tenders received by it. But here respondent 1 did not reject the tenders outright and enter into direct negotiations with respondents 4 for awarding the contract. The process of awarding a contract by inviting tenders was not terminated or abandoned by respondent 1 by rejecting all the tenders but in furtherance of the process, the tender of respondents 4 was accepted by respondent 1. The contract was not given to respondents 4 as a result of direct negotiations. Tenders were invited and out of the tenders received, the one submitted by respondents 4 was accepted and the contract was given to them. It is, therefore, not possible to justify the action of respondent 1 on the ground that respondent 1 could have achieved the same result by rejecting all the tenders and entering into direct negotiations with respondents 4.

9. That takes us to the next question whether the acceptance of the tender of respondents 4 was invalid and liable to be set aside at the instance of the appellant. It was contended on behalf of respondents 1 and 4 that the appellant had no locus to maintain the writ stranger. The argument was that if the appellant did not enter the filed of competition by submitting a tender, what did it matter to him whose tender was accepted; what grievance could he have if the tender of respondents 4 was wrongly accepted. A person whose tender was rejected might very well complain that the tender of someone else was wrongly accepted, but, it was submitted, how could a person who never tendered and who was at no time in the field, put forward such a complaint ? This argument, in our opinion, is misconceived and cannot be sustained for a moment. The grievance of the appellant, it may be noted, was not that his tender was rejected as a result of improper acceptance of the tender of respondents 4, but that he was differentially treated and denied equality of opportunity with respondents 4 in submitting a tender. His complaint was that if it were known that non-fulfilment of the condition of eligibility would be no bar to consideration of a tender, he also would have submitted a tender and competed for obtaining a contract. But he was precluded from submitting a tender and entering the filed of consideration by reason of the condition of eligibility, while so far as respondents 4 were concerned, their tender was entertained and accepted even though they did not satisfy the condition of eligibility and this resulted in inequality of treatment which was constitutionally impermissible. This was the grievance made by the appellant in the writ petition and there can be no doubt that if this grievance was well founded, the appellant would be entitled to maintain the writ petition. The question is whether this grievance was justified in law and the acceptance of the tender of respondents 4 was vitiated by any legal infirmity.

10. Now, there can be no doubt that what paragraph (1) of the notice prescribed was a condition of eligibility which was required to be satisfied by every person submitted a tender. The condition of eligibility was that the person submitting a tender must be conducting or running a registered IInd Class hotel or restaurant and he must have at least 5 years' experience as such and if he did not satisfy this condition of eligibility, his tender would not be eligible for consideration. This was the standard or norm of eligibility laid down by respondent 1 and since the respondents 4 did not satisfy this standard or norm, it was not competent to respondent 1 to entertain the tender of respondents 4. It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in Viteralli v. Saton (359 U.S. 535 : Law Ed (Second series) 1012) where the learned Judge said :

> An executive agency must be rigorously held to the standards by which it professes its action to be judge ..... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such

> agency, that procedure must be scrupulously observed ... This judicial evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.

This Court accepted the rule as valid and applicable in India in A. S. Ahluwalia v. Punjab ((1975) 3 SCR 82 : (1975) 3 SCC 503, 504 : 1975 SCC (L&S) 27) and in subsequent decision given in Sukhdev v. Bhagatram ((1975) 3 SCR 619 : (1975) 1 SCC 421, 462 : 1975 SCC (L&S) 101), Mathew, J., quoted the above-referred observations of Mr. Justice Frankfurter with approval. It may be noted that this rule, though supportable also as an emanation from Article 14, does not rest merely on that article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. It we turn to the judgment of Mr. Justice Frankfurter and examine it, we find that he has not sought to draw support for the rule from the equality clause of the United States Constitution, but evolve it purely as a rule of administrative law. Even in England, the recent trend in administrative law is in that direction as is evident from what is stated at pages 540-41 in Prof. Wade's "Administrative Law", 4th edition. There is no reason why we should hesitate to adopt this rule as a part of our continually expanding administrative law. Today with tremendous expansion of welfare and social service functions, increasing control of material and economic resources and large scale assumption of industrial and commercial activities by the State, the power of the executive Government to affect the lives of the people is steadily growing. The attainment of socio-economic justice being a conscious end of State policy, there is a vast and inevitable increase in the frequency with which ordinary citizens come into relationship of direct encounter with State power-holders. This renders it necessary to structure and restrict the power of the executive Government so as to prevent its arbitrary application or exercise. Whatever be the concept of the rule of law, whether it be the meaning given by Dicey in his "The Law of the Constitution" or the definition give by Hayek in his "Road to Serfdom" and "Constitution of Liberty" or the exposition set forth by Harry Jones in his "The Rule of Law and the Welfare State", there is as pointed out by Mathew, J., in his article on "Trade Welfare State, Rule of Law and Natural Justice" in "Democracy, Equality and Freedom" "substantial agreement in juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found". It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrations. That it the very essense of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affectation of some right or denial of some privilege.

11. Today the Government in a welfare State, is the regulator and dispenser of special services and provider of a larger number of benefits, including jobs, contracts, licences, quotas, mineral rights, etc. The Government pours forth wealth, money, benefits, services contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme of State and local welfare. Then again, thousands of people are employed in the State and the Central Governments and local authorities. Licences are required before one can engage in many kinds of businesses or work. The power of giving licences means power to withhold them and this gives control to the Government or to the agents of Government on the lives of many people. Many individuals and many more businesses enjoy largesse in the form of Government contracts. These contracts often resemble subsidies. It is

virtually impossible to lose money on them and many enterprises are set up primarily to do business with Government. Government owns and controls hundreds of acres of public land valuable for mining and other purposes. These resources are available for utilisation by private corporations and individuals by way of lease or licence. All these mean growth in the Government largesse and with the increasing magnitude and range of governmental functions as we move closer to a welfare State, more and more of our wealth consists of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. But on that account, can it be said that they do not enjoy any legal protection ? Can they be regarded as gratuity furnished by the State so that the State may withhold, grant or revoke it at its pleasure ? Is the position of the Government in this respect the same as that of a private giver ? We do not think so. The law has not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. Some interests in Government largesse, formerly regarded as privileges, have been recognised as rights while others have been given legal protection not only by forging procedural safeguards but also by confining/structuring and checking Government discretion in the matter of grant of such largesse. The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largesse in its arbitrary discretion or at its sweet will. It is insisted, as pointed out by Prof. Reich in an especially stimulating article on "The New Property" in 73 Yale Law Journal 733, "that Government action be based on standards that are not arbitrary or unauthorised." The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith. The Government is still the Government when it acts in the matter of granting largesse and it cannot act arbitrarily. It does not stand in the same position as a private individual.

12. We agree with the observations of Mathew, J., in V. Punnan Thomas v. State of Kerala (AIR 1969 Ker 81) that :

> The Government, is not and should not be as free as an individual in selecting the recipients for its largesse. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal.

The same point was made by this Court in Erusian Equipment and Chemicals Ltd. v. State of West Bengal ((1975) 2 SCR 674 : (1975) 1 SCC 70) where the question was whether black-listing of a person without giving him an opportunity to be heard was bad ? Ray, C.J., speaking on behalf of himself and his colleagues on the Bench pointed out that black-listing of a person not only affects his reputation which is, in Poundian terms, an interest both of personality and substance, but also denies him equality in the matter of entering into contract with the Government and it cannot, therefore, be supported without fair hearing. It was argued for the Government that no person has a right to enter into contractual relationship with the Government and the Government, like any other private individual, has the absolute right to enter into contract with any one it pleases. But the Court, speaking through the learned Chief Justice, responded that the Government is not like a private individual who can pick and choose the person with whom it will deal, but the Government is still a Government when it enters into contract or when it is administering largesse and it cannot, without adequate reason, exclude any person from dealing with it or take away largesse arbitrarily. The learned Chief Justice said that when the Government is trading with the public, "the democratic form of Government demands equality and absence of arbitrariness and discrimination in such

transactions .... The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure". This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotes or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

13. Now, it is obvious that the Government which represents the executive authority of the State, may act through the instrumentality or agency of natural persons or it may employ the instrumentality or agency of juridical persons to carry out its functions. In the early days, when the Government had limited functions, it could operate effectively through natural persons constituting its civil service and they were found adequate to discharge governmental functions, which were of traditional vintage. But as the tasks of the Government multiplied with the advent of the welfare State, it began to be increasingly felt that the framework of civil service was not sufficient to handle the new tasks which were often of specialised and highly technical character. The inadequacy of the civil service to deal with these new problems came to be realised and it became necessary to forge a new instrumentality or administrative device for handling these new problems. It was in these circumstances and with a view to supplying this administrative need that the public corporation came into being as the third arm of the Government. As early as 1819 the Supreme Court of the United States in MacCullough v. Maryland (4 Wheat 315 (1819) held that the Congress has power to charter corporations as incidental to or in aid of governmental functions and, as pointed out by Mathew, J., in Sukhdev v. Bhagat Ram (supra), such federal corporations would ex-hypothesi be agencies of the Government. In Great Britain too, the policy of public administration through separate corporations was gradually evolved and the conduct of basic industries through giant corporations has now become a permanent feature of public life. So far as India is concerned, the genesis of the emergence of corporations as instrumentalities or agencies of Government is to be found in the Government of India Resolution of Industrial Policy dated April 6, 1948 where it was stated inter alia that "management of State enterprise will as a rule be through the medium of public corporation under the statutory control of the Central Government who will assume such powers as may be necessary to ensure this". It was in pursuance of the policy envisaged in this and subsequent resolutions on industrial policy that corporations were created by Government for setting up and management of public enterprises and carrying out other public functions. Ordinarily these functions could have been carried out by Government departmental through its service personal, but the instrumentality or agency of the corporations was resorted to in these cases having regard to the nature of the task to be performed. The corporations acting as instrumentality or agency of Government would obviously be subject to the same limitations in the filed of constitutional and administrative law as Government itself, though it the eye of the law, they would be distinct and independent legal entities. If Government acting through its officers is subject to certain constitutional and public law limitations, it must follow a fortiori that Government acting through

the instrumentality or agency of corporations should equally be subject to the same limitations. But the question is how to determine whether a corporation is acting as instrumentality or agency of Government. It is a question not entirely free from difficulty.

14. A corporation may be created in one of two ways. It may be either established by statute or incorporated under a law such as the Companies Act, 1956 or the Societies Registration Act, 1860. Where a corporation is wholly controlled by Government not only in its policy-making but also in carrying out the functions entrusted to it the law establishing it or by the charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government. But ordinarily where a corporation is established by statute, it is autonomous in its working, subject only to a provision, oftentimes made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters. So also a corporation incorporated under law is managed by a board of directors or committees of management in accordance with the provisions of the statute under which it is incorporated. When does such a corporation become an instrumentality or agency of Government ? Is the holding of the entire share capital of the corporation by Government enough or is it necessary that in addition, there should be a certain amount of direct control exercised by Government and, if so, what should be the nature of such control ? Should the functions which the corporation is charged to carry out possess any particular characteristic or feature, or is the nature of the functions immaterial ? Now, one thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. But, as is quite often the case, a corporation established by statute may have no shares or shareholders, in which case it would be a relevant factor to consider whether the administration is in the hands of a board of directors appointed by Government, through this consideration also may not be determinative, because even here the directors are appointed by Government, they may be completely free from governmental control in the discharge of their functions. What then are the tests to determine whether a corporation established by statute or incorporated under law is an instrumentality or agency of Government ? It is not possible to formulate an all-inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula which would provide the correct division of corporations into those which are instrumentalities or agencies of Government and those which are not.

15. The analogy of the concept of State action as developed in the United States may not, however, be altogether out of place while considering this question. The decisions of the courts in the United States seem to suggest that a private agency, if supported by extraordinary assistance given by the State, may be subject to the same constitutional limitations as the State. Of course, it may be pointed out that "the State's general common law and statutory structure under which its people carry on their private affairs, own property and contract, each enjoying equality in terms of legal capacity, is not such State assistance as would transform private conduct into State action". But if extensive and unusual financial assistance is given and the purpose of the Government in giving such assistance coincides with the purpose for which the corporation is expected to use the assistance and such purpose is of public character, it may be a relevant circumstance supporting an inference that the corporation is an instrumentality or agency of Government. The leading case on the subject in the United States is Kerr v. Enock Pratt Free Library (149 F. 2d 212). The library system in question in this case was established by private donation in 1882, but by 1944, 99 per cent of the system's budget was supplied by the city, title to the library property was held by the city, employees were paid by the city payroll officer and a high degree of budget control was exercised or available to the city government. On these facts the Court of Appeal required the trustees managing the system to abandon a discriminatory admission policy for its library training courses. It will be seen that in this

case there was considerable amount of State control of the library system in addition to extensive financial assistance and it is difficult to say whether, in the absence of such control, it would have been possible to say that the action of the trustees constituted State action. Thomas P. Lewis has expressed the opinion in his article on "The Meaning of State Action" (60 Columbia Law Review 1083) that in this case "it is extremely unlikely that absence of public control would have changed the result as long as 99% of the budget of a nominally private institution was provided by Government. Such extensive governmental support should be sufficient identification with the Government to subject the institution to the provisions of the Fourteenth Amendment". It may, therefore, be possible to say that were the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character. But where financial assistance is not so extensive, it may not by itself, without anything more, tender the corporation an instrumentality or agency or government, for there are many private institutions which are in receipt of financial assistance from the State and merely on that account, they cannot be classified as State agencies. Equally a mere finding of some control by the State would not be determinative of the question "since a State has considerable measure of control under its police power over all types of business operations". But "a finding of State financial support plus an unusual degree of control over the management and policies might lead one to characterise an operation as State action". Vide Sukhdev v. Bhagatram ((1975) 3 SCR 619, 650 : (1975) 1 SCC 421, 454 (para 96)). So also the existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality. It may also be a relevant factor to consider whether the corporation enjoys monopoly status which is State conferred or State protected. There can be little doubt that State conferred or State protected monopoly status would be highly relevant in assessing the aggregate weight of the corporations' ties to the State. Vide the observations of Douglas, J., in Jackson v. Metropolitan Edison Co. (419 US 345 : 42 L Ed 2d 477).

16. There is also another factor which may be regarded as having a bearing on this issue and it is whether the operation of the corporation is an important public function. It has been held in the United States in a number of cases that the concept of private action must yield to a conception of State action where public functions are being performed. Vide Arthur S. Miller : "The Constitutional Law of the 'Security State'" (10 Standard Law Review 620 at 664). It was pointed out by Douglas, J., in Evans v. Newton (382 US 296 : 15 L Ed 2d 373) that "when private individuals or groups are endowed by the State with powers or functions governmental in nature, they become agencies or instrumentalities of the State". Of course, with the growth of the welfare State, it is very difficult to define what functions are governmental and what are not, because, as pointed out by Villmer, L.J., in Pfizer v. Ministry of Health ((1964) 1 Ch 614 : (1963) 1 All ER 590 (affirmed in 1965 AC 512 : (1965) 1 All ER 450), there has been since mid-Victorian times, "a revolution in political thought and a total different conception prevails today as to what is and what is not within the functions of Government". Douglas, J., also observed to the same effect in New York v. United States (326 US 572) : "A State's project is as much a legitimate governmental activity whether it is traditional, or akin to private enterprise, or conducted for profit." Cf. Helvering v. Gerhardt (304 US 405, 426, 427). A State may deem it as essential to its economy that it own and operate a railroad, a mill, or an irrigation system as it does to own and operate bridges, street lights, or a sewage disposal plant. What might have been viewed in an earlier day as an improvident or even dangerous extension of State activities may today be deemed indispensable. It may be noted that besides the so-called traditional functions, the modern State operates a multitude of public enterprises and discharges a host of other public functions. If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in

classifying the corporation as an instrumentality or agency of Government. This is precisely what was pointed out by Mathew, J., in Sukhdev v. Bhagatram (supra) where the learned Judge said that "institutions engaged in matters of high public interest or performing public functions are by virtue of the nature of the functions performed government agencies. Activities which are too fundamental to the society are by definition too important not to be considered government functions".

17. This was one of the principal tests applied by the United States Supreme Court in Marsh v. Alabama (326 US 501 : 19 L Ed 265 (1946)) for holding that a corporation which owned a company town was subject to the same constitutional limitations as the State. This case involved the prosecution of Marsh, a member of the Jehovah's witnesses sect, under a State trespass statue for refusing to leave the sidewalk of the company town where she was distributing her religious pamphlets. She was fined $5 and aggrieved by her conviction she carried the matter right up to the Supreme Court contending successfully that by reason of the action of the corporation her religious liberty had been denied. The Supreme Court held that administration of private property such as a town, though privately carried on, was, nevertheless, in the nature of a public function and that the private rights of the corporation must, therefore, be exercised within constitutional limitations and the conviction for trespass was reversed. The dominant them of the majority opinion written by Mr. Justice Black was that the property of the corporation used as a town not recognisably different from other towns, lost its identification as purely private property. It was said that a town may be privately owned and managed but that does not necessarily allow the corporation to treat it as if it was wholly in the private sector and the exercise of constitutionally protected rights on the public street of a company town could not be denied by the owner. "The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it . . . . Thus, the owners of privately held bridges, ferries, turnpikes and railroads may not operate them as freely as a framer does his farm. Since these facilities are built and operated primarily to benefit the public and since their operation is essentially a public function, it is subject to State regulation". Mr. Justice Frankfurter, concurring, reduced the case to simpler terms. He found in the realm of civil liberties the need to treat a town, private or not, as a town. The function exercised by the corporation was in the nature of municipal function and it was, therefore, subject to the constitutional limitation placed upon State action.

18. We find that the same test of public or governmental character of the function was applied by the Supreme Court of the United States in Evans v. Newton (supra) and Smith v. Allwight (321 US 649). But the decisions show that even this test of public or governmental character of the function is not easy of application and does not invariably lead to the correct inference because the range of governmental activity is broad and varied and merely because an activity may be such as may legitimately be carried on by Government, it does not mean that a corporation, which is otherwise a private entity, would be an instrumentality of agency of Government by reason of carrying on such activity. In fact, it is difficult to distinguish between governmental functions and non-governmental functions. Perhaps the distinction between governmental and non-governmental functions is not valid any more in a social welfare State where the laissez faire is an outmoded concept and Herbert Spencer's social statics has no place. The contract is rather between governmental activities which are private and private activities which are governmental. [Mathew, J., Sukhdev v. Bhagatram (supra) at p. 652 : SCC pp. 452, 456, para 103]. But the public nature of the function, if impregnated with governmental character or "tied or entwined with Government" or fortified by some other additional factor, may render the corporation an instrumentality or agency of Government. Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference.

19. It will thus be seen that there are several factors which may have to be considered in determining whether a corporation is an agency or instrumentality of Government. We have referred to some of these factors and they may be summarised as under : whether there is any financial assistance given by the State, and if so, what is the magnitude of such assistance, whether there is any other form of assistance, given by the State, and if so, whether it is of the usual kind or it is extraordinary, whether there is any control of the management and policies of the corporation by the State and what is the nature and extent of such control, whether the corporation enjoys State conferred or State protected monopoly status and whether the functions carried out by the corporation are public functions closely related to governmental functions. This particularisation of relevant factors is however not exhaustive and by its very nature it cannot be, because with increasing assumption of new tasks, growing complexities of management and administration and the necessity of continuing adjustment in relations between the corporation and Government calling for flexibility, adaptability and innovative skills, it is not possible to make an exhaustive enumeration of the tests which would invariably and in all cases provide an unfailing answer to the question whether a corporation is governmental instrumentality or agency. Moreover even amongst these factors which we have described, no one single factor will yield a satisfactory answer to the question and the Court will have to consider the accumulative effect of these various factors and arrive at its decision on the basis of a particularised inquiry into the facts and circumstances of each case. "The dispositive question in any State action case", as pointed out by Douglas, J., in Jackson v. Metropolitan Edison Company (supra) "is not whether any single fact or relationship presents a sufficient degree of State involvement, but rather whether the aggregate of all relevant factors compels a finding of State responsibility". It is not enough to examine seriatim each of the factors upon which a corporation is claimed to be an instrumentality or agency of Government and to dismiss each individually as being insufficient to support a finding of that effect. It is the aggregate or cumulative effect of all the relevant factors that is controlling.

20. Now, obviously where a corporation is an instrumentality or agency of Government, it would, in the exercise of its power or discretion, be subject to the same constitutional or public law limitations as Government. The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance.

21. This rule also flows directly from the doctrine of equality embodied in Article 14. It is now well settled as a result of the decisions of this Court in E. P. Royappa v. State of Tamil Nadu ((1974) 2 SCR 348 : (1974) 4 SCC 3) and Maneka Gandhi v. Union of India ((1978) 1 SCC 248) that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory : it must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory. This principle was recognised and applied by a Bench of this Court presided over by Ray, C.J., in Erusian Equipment and Chemicals Ltd. v. State of West Bengal (supra) where the learned Chief Justice pointed out that the State can carry on executive function by making a law or without making a law. The exercise of such powers

and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of black-listing has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of black-listing ..... A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling ..... It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods.

It must, therefore follow as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with any one, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground.

22. It is interesting to find that this rule was recognised and applied by a Constitution Bench of this Court in a case of sale of kendu leaves by the Government of Orissa in Rashbihari Panda v. State of Orissa ((1969) 3 SCR 374 : (1969) 1 SCC 414). The trade of kendu leaves in the State of Orissa was regulated by the Orissa Kendu Leaves (Control of Trade) Act, 1961 and this Act created a monopoly in favour of the State so far as purchase of kendu leaves from growers and pluckers was concerned. Section 10 of the Act authorised the Government to sell or otherwise dispose of kendu leaves purchase in such manner as the Government might direct. The Government first evolved a scheme under which it offered to renew the licences of those traders who in its view had worked satisfactorily in the previous year and had regularly paid the amounts due from them. The scheme was challenged and realising that it might be struck down, the Government withdrew the scheme and instead, decided to invite tenders for advance purchases of kendu leaves but restricted the invitation to those individuals who had carried out contracts in the previous year without default and to the satisfaction of the Government. This method of sale of kendu leaves was also challenged by filing a writ petition on the ground inter alia that it was violative of Articles 14 and 19(1)(g) and this challenge, though negatived by the High Court, was upheld by this Court in appeal. The court pointed out that the original scheme of offering to enter into contracts with the old licensees and to renew their terms was open to grave objection, since it sought arbitrarily to exclude many persons interested in the trade and the new scheme under which the Government restricted the invitation to make offers to those traders who had carried out their contracts in the previous year without default and to the satisfaction of the Government was also objectionable, since the right to make tenders for the purchase of kendu leaves being restricted to a limited class of persons, it effectively shut out all other persons carrying on trade in kendu leaves and also the new entrants into that business and hence it was ex facie discriminatory and imposed unreasonable restrictions upon the right of persons other than the existing contractors to carry on business. Both the schemes evolved by the Government were thus held to be violative of Articles 14 and 19(1)(g) because they "gave rise to a monopoly in the trade in kendu leaves to certain traders and singled out other traders for discriminatory treatment". The argument that existing contractors who had carried out their obligations in the previous year regularly and to the satisfaction of the Government formed a valid basis of classification bearing a just an reasonable relation to the object sought to be achieved by the

sale, namely, effective execution of the monopoly in the public interest, was also negatived and it was pointed out that : "exclusion of all persons interested in the trade, who were not in the previous year licensees, is ex facie arbitrary : it had not direct relation to the object of preventing exploitation of pluckers and growers of kendu leaves, nor had it any just or reasonable relation to the securing of the full benefit from the trade, to the State". The Court referred to the offer made by a well known manufacturer of bidis for purchase of the entire crop of kendu leaves for a sum of Rs. 3 crores which was turned down by the Government and expressed its surprise that no explanation was attempted to the given on behalf of the State as to why such an offer, from which the State stood to gain more than Rs. 1 crore, was rejected by the Government. It will be see from this judgment that restricting the invitation to submit tenders to a limited class of persons was held to be violative of the equality clause, because the classification did not bear any just and reasonable relation to the object sought to be achieved, namely, selling of kendu leaves in the interest of the general public. The standard or norm laid down by the Government for entering into contracts of sale of kendu leaves with third parties was discriminatory and could not stand the scrutiny of Article 14 and hence the scheme was held to be invalid. The Court rejected the contention of the Government that by reason of Section 10 it was entitled to dispose of kendu leaves in such manner as it thought fit and there was no limitation upon its power to enter into contracts for sale of kendu leaves with such persons it liked. The Court held that the Government was, in the exercise of its power to enter into contracts for sale of kendu leaves, subject to the Constitutional limitation of Article 14 and it could not act arbitrarily in selecting persons with whom to enter into contracts and discriminate others similarly situate. The Court criticised the Government for not giving any explanation as to why an offer for a large amount was not accepted, the clearest implication being that the Government must act in the public interest; it cannot act arbitrarily and without reason and if it does so, its action would be liable to be invalidated. This decision wholly supports the view we are taking in regard to the applicability of the rule against arbitrariness in State action.

23. We may also in this connection refer to the decision of this Court in C. K. Achuthan v. State of Kerala (1959 Supp 1 SCR 787 : AIR 1959 SC 490), where Hidayatullah, J., speaking on behalf of the court made certain observation which was strongly relied upon on behalf of the respondents. The facts of this case were that the petitioner and respondent 3 Co-operative Milk Supply Union, Cannanore, submitted tenders for the supply of milk to the Government hospital at Cannanore for the year 1948-49. The Superintendent who scrutinised the tenders accepted that of the petitioner and communicated the reasons for the decision to the Director of Public Health. The resulting contract in favour of the petitioner was, however, subsequently cancelled by issuing a notice in terms of clause (2) of the tender, in pursuance of the policy of the Government that in the matter of supply to Government Medical Institutions, the Co-operative Milk Supply Union should be given contract on the basis of prices fixed by the Revenue Department. The petitioner challenged the decision of the Government in a petition under Article 32 of the Constitution on the ground inter alia that there has been discrimination against him vis-a-vis respondent 3 and as such, there was contravention of Article 14 of the Constitution. The Constitution Bench rejected this contention of the petitioner and while doing so, Hidayatullah, J., made the following observation :

> There is no discrimination, because it is perfectly open to the Government, even as it is to a private party, to choose a person to their liking, to fulfil contracts which they wish to be performed. When one person is chosen rather than another, the aggrieved party cannot claim the protection of Article 14, because the choice of the person to fulfil a particular contract must be left to the Government.

The respondents relied very strongly on this observation in support of their contention that it is open

to the 'State' to enter into contract with anyone it likes and choosing one person in preference to another for entering into a contract does not involve violation of Article 14. Though the language in which this observation is couched is rather wide, we do not think that in making this observation, the Court intended to lay down any absolute proposition permitting the State to act arbitrarily in the matter of entering into contract with third parties. We have no doubt that the Court could not have intended to lay down such a proposition because Hidayatullah, J. who delivered the judgment of the Court in this case was also a party to the judgment in Rashbihari Panda v. State of Orissa (supra) which was also a decision of the Constitution Bench, where it was held in so many terms that the State cannot act arbitrarily in selecting persons with whom to enter into contracts. Obviously what Court meant to say was that merely because one person is chosen in preference to another, it does not follow that there is a violation of Article 14, because the Government must necessarily be entitled to make a choice. But that does not mean that the choice be arbitrary or fanciful. The choice must be dictated by public interest and must be unreasoned or unprincipled.

24. The respondents also relied on the decision of this Court in Trilochan Mishra v. State of Orissa ((1971) 3 SCC 153). The complaint of the petitioner in that case was that the bids of persons making the highest tenders were not accepted and persons who had made lesser bids were asked to raise their bids to the highest offered and their revised bids were accepted. The Constitution Bench negatived this complaint and speaking through Mitter, J., observed :

> With regard to the grievance that in some cases the bids of persons making the highest tenders were not accepted, the facts are that persons who had made lower bids were asked to raise their bids to the highest offered before the same were accepted. Thus there was no loss to Government and merely because the Government preferred one tender to another no complaint can be entertained. Government certainly has a right to enter into a contract with a person well known to it and specially one who has faithfully performed his contracts in the past in preference to an undersirable or unsuitable or untried person. Moreover, Government is not bound to accept the highest tender but may accept a lower one in case it thinks that the person offering the lower tenders is on an overall consideration to be preferred to the higher tenderer.

We fail to see how this observation can help the contention of the respondents. It does not say that the Government can enter into contract with anyone it likes arbitrarily and without reason. On the contrary, it postulates that the Government may reject a higher tender and accept a lower one only when there is valid reason to do so, as for example, where it is satisfied that the person offering the lower tender is on overall consideration preferable to the higher tenderer. There must be some relevant reason for preferring one tenderer to another, and if there is, the Government can certainly enter into contract with the former even though his tender may be lower but it cannot do so arbitrary or for extraneous reasons.

25. There was also one other decision of this Court in State of Orissa v. Harinarayan Jaiswal ((1972) 2 SCC 36) which was strongly relied upon on behalf of the respondents. There the respondents were the highest bidders at an auction held by the Orissa Government through the Excise Commissioners for the exclusive privilege of selling by retail country liquor in some shops. The auction was held pursuant to an order dated January 6, 1971 issued by the Government of Orissa in exercise of the power conferred under Section 29(2) of the Bihar and Orissa Excise Act, 1915 and clause (6) of this Order provided that "no sale shall be deemed to be final unless confirmed by the State Government who shall be at liberty to accept or reject any bid without assigning any reason therefor". The

Government of Orissa did not accept any of the bids made at the auction and subsequently sold the privilege by negotiations with some other parties. One of the contentions raised on behalf of the petitioners in that case was that the power retained by the Government "to accept or reject any bid without any reason therefor" was an arbitrary power violative of Articles 14 and 19(1)(g). This contention was negatived and Hedge, J., speaking on behalf of the Court observed :

> The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. Hence quite naturally, the legislature has empowered the Government to see that there is no leakage in its revenue. It is for the Government to decide whether the price offered in an auction sale is adequate. While accepting or rejecting a bid, it is merely performing an executive function. The correctness of its conclusion is not open to judicial review. We fail to see how the plea of contravention of Article 19(1)(g) or Article 14 can arise in these cases. The Government's power to sell the exclusive privilege set out in Section 22 was not denied. It was also not disputed that these privileges could be sold by public auction. Public auctions are held to get the best possible price. Once these aspects are recognised, there appears to be no basis for contending that the owner of the privileges in question who had offered to sell them cannot decline to accept the highest bid if he thinks that the price offered is inadequate.

It will be seen from these observations that the validity of clause (6) of the Order dated January 6, 1971 was upheld by this Court on the ground that having regard to the object of holding the auction, namely, to raise revenue, the Government was entitled to reject even the highest bid, if it thought that the price offered was inadequate. The Government was bound to accept the tender of the person who offered the highest amount and if the Government rejected all the bids made at the auction, it did not involve any violation of Article 14 of 19(1)(g). This is a self-evident proposition and we do not see how it can be of any assistance to the respondents.

26. The last decision to which reference was made on behalf of the respondents was the decision in P. R. Quenin v. M. K. Tendel ((1974) 3 SCR 64 : (1974) 2 SCC 169). This decision merely, reiterates the principle laid down in the earlier decisions in Trilochan Mishra v. State of Orissa (supra) and State of Orissa v. Harinarayan Jaiswal (supra) and points out that a condition that the Government shall be at liberty to accept or reject any bid without assigning any reason therefor is not violative of Article 14 and that "in matters relating to contracts which the Government, the latter is not bound to accept the tender of the person who offers the highest amount." Nowhere does it say that such a condition permits the Government to act arbitrarily in accepting a tender or that under the guise or pretext of such a condition, the Government may enter into a contract with any person it likes, arbitrarily and without reason. In fact the Court pointed out at the end of the judgment that the act of the Government was not "shown to be vitiated by such arbitrariness as should call for interference by the Court", recognising clearly that if the rejection of the tender of respondent 1 were arbitrary, the Court would have been justified in striking it down as invalid.

27. Now this rule, flowing as it does from Article 14, applies to every State action and since "State" is defined in Article 12 to include not only the Government of India and the Government of each of the States, but also "all local or other authorities within the territory of India or under the control of the Government of India", it must apply to action of "other authorities" and they must be held subject to the same constitutional limitation as the Government. But the question arises, what are the "other authorities" contemplated by Article 12 which fall within the definition of 'State' ? On this question considerable light is thrown by the decision of this Court in Rajasthan Electricity Board v.

Mohan Lal ((1967) 3 SCR 377 : AIR 1967 SC 1857 : (1968) 1 LLJ 257). That was a case in which this Court was called upon to consider whether the Rajasthan Electricity Board was an 'authority' within the meaning of expression "other authorities" in Article 12. Bhargava, J., delivering the judgment of the majority pointed out that the expression "other authorities" in Article 12 would include all constitutional and statutory authorities on whom powers are conferred by law. The learned Judge also said that if any body of persons has authority to issue directions the disobedience of which would be punishable as a criminal offence, that would be an indication that the authority in 'State'. Shah, J., who delivered a separate judgment, agreeing with the conclusion reached by the majority, preferred to give a slightly different meaning to the expression "other authorities". He said that authorities, constitutional or statutory, would fall within the expression "other authorities" only if they are invested with the sovereign power of the State, namely, the power to make rules and regulations which have the force of law. The ratio of this decision may thus be stated to be that a constitutional or statutory authority would be within the meaning of the expression "other authorities", if it has been invested with statutory power to issue binding directions to third parties, the disobedience of which would entail penal consequence or it has the sovereign power to make rules and regulations having the force of law. This test was followed by Ray, C.J., in Sukhdev v. Bhagatram (supra). Mathew, J., however, in the same case, propounded a broader test, namely, whether the statutory corporation or other body of authority, claimed to fall within the definition of 'State', is an instrumentality or agency of Government : if it is, it would fall within the meaning of the expression 'other authorities' and would be 'State'. Whilst accepting the test laid down in Rajasthan Electricity Board v. Mohan Lal (supra), and followed by Ray, C.J., in Sukhdev v. Bhagatram (supra), we would, for reasons already discussed, prefer to adopt the test of Governmental instrumentality or agency as one more test and perhaps a more satisfactory one for determining whether a statutory corporation, body or other authority falls within the definition of 'State'. If a statutory corporation, body or other authority is an instrumentality or agency of the Government, it would be an 'authority' and therefore 'State' within the meaning of that expression in Article 12.

28. It is necessary at this stage of refer to a few decisions of this Court which seem to bear on this point and which require a little explanation. The first is the decision in Praga Tool Corporation v. C. A. Imanuel ((1969) 3 SCR 773 : (1969) 1 SCC 585). This was a case in which some of the workmen sought a writ a mandamus against Praga Tool Corporation which was a company with 56 per cent of its share capital held by the Central Government, 32 per cent by the Andhra Pradesh Government and 12 per cent by private individuals. The Court held that a writ of mandamus did not lie, because Praga Tool Corporation "being a non-statutory body and one incorporated under the Companies Act, there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of mandamus, nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty". It is difficult to see how this decision can be of any help in deciding the present issue before us. This was not a case where Praga Tool Corporation claimed to be an instrumentality of government or an 'authority' within the meaning of Article 12. The only question was whether a writ of mandamus could lie and it was held that since there was no duty imposed on Praga Tool Corporation by statute, no writ of mandamus could issue against it.

29. The second decision to which we must refer is that in Heavy Engineering Mazdoor Union v. State of Bihar ((1969) 3 SCR 995 : (1969) 1 SCC 765). The question which arose in this case was whether a reference of an industrial dispute between the Heavy Engineering Corporation Limited (hereinafter referred to as the 'Corporation') and the Union made by the State of Bihar under Section 10 of the Industrial Disputes Act, 1947 was valid. The argument of the Union was that the industry

in question was "carried on under the authority of the Central Government" and the reference could, therefore, be made only by the Central Government. The Court held that the words "under the authority" mean "pursuant to the authority, such as where agency or a servant acts under or pursuant to the authority of his principal or master" and on this view, the Court addressed itself to the question whether the Corporation could be said to be carrying on business pursuant to the authority of the Central Government. The answer to this question was obviously 'no' because the Corporation was carrying on business in virtue of the authority derived from its memorandum and articles of association and not by reason of any authority granted by the Central Government. The Corporation, in carrying on business, was acting on its own behalf and not on behalf of the Central Government and it was therefore not a servant or agent of the Central Government in the sense that its actions would bind the Central Government. There was no question in this case whether the Corporation was an instrumentality of the Central Government and therefore an 'authority' within the meaning of Article 12. We may point out here that when we speak of a Corporation being an instrumentality or agency of Government, we do not mean to suggest that the Corporation should be an agent of the Government in the sense that whatever it does should be binding on the Government. It is not the relationship of principal and agent which is relevant and material but whether the Corporation is an instrumentality of the Government in the sense that a part of the governing power of the State is located in the Corporation and though the Corporation is acting on its own behalf and not on behalf of the Government, its action is really in the nature of State action. This decision dealing with a altogether different point has no bearing on the present issue.

30. We may then refer to the decision in S. L. Aggarwal v. General Manager, Hindustan Steel Limited ((1970) 3 SCR 363 : (1970) 1 SCC 177). This decision has also no relevance to the point at issue before us, since the only question in that case was whether an Assistant Surgeon in the employment of Hindustan Steel Limited could be said to be holding a civil post under the Union or a State so as to be entitled to the protection of Article 311(2) of the Constitution. The Court held that Hindustan Steel Limited was not a department of the Government nor were its employees holding posts under the State within the meaning of Article 311(2). The decision was clearly right and indeed it could not be otherwise, since Hindustan Steel Limited, which was a distinct and independent legal entity, was not a department of the Government and could not be regarded as State for the purpose of Article 311(2). It may be noted that the Court was not concerned with the question whether Hindustan Steel Limited was an 'authority' within the meaning of Article 12.

31. Lastly, we must refer to the decision in Sabhajit Tewari v. Union of India ((1975) 1 SCC 485) where the question was whether the Council of Scientific and Industrial Research was an 'authority' within the meaning of Article 12. The Court no doubt took the view on the basis of facts relevant to the constitution and functioning of the Council that it was not an 'authority', but we do not find any discussion in this case as to what are the features which must be present before a corporation can be regarded as an 'authority' within the meaning of Article 12. This decision does not lay down any principle or test for the purpose of determining when a corporation can be said to be an 'authority'. If at all any test can be gleaned from the decision, it is whether the Corporation is "really an agency of the Government". The Court seemed to hold on the facts that the Council was not an agency of the Government and was, therefore, not an 'authority'.

32. We may examine, in the light of this discussion, whether respondent 1, namely, the International Airport Authority of India, can be said to be an authority falling within the definition of 'State' in Article 12. It is necessary to refer to some of the provisions of the International Airport Authority Act, 1971 (hereinafter referred to as the Act) for the purpose of determining this question. Sub-section (1) of Section 3 of the Act provides that the Central Government shall constitute an

authority to be called the International Airport Authority of India, to whom we shall hereafter refer as respondent 1. Sub-section (2) states that respondent 1 shall be a body corporate having perpetual succession and a common seal and sub-section (3) enacts that respondent 1 shall consist of a Chairman to be appointed by the Central Government, the Director General of Civil Aviation ex-officio and not less than six and not more than thirteen members to be appointed by the Central Government. The term of office of every member of respondent 1 is prescribed by sub-section (1) of Section 5 to be 3 years, but the Central Government is given under the Proviso power to terminate the appointment of any member who is not a servant of the Government after giving him notice as also to terminate at any time the appointment of any member who is a servant of the Government. The power to remove a member in certain specified circumstances is also vested in the Central Government under Section 6. Section 12, sub-section (1) provides that as from the date appointed by the Central Government all properties and other assets vested in the Central Government for the purposes of the airport and administered by the Director General of Civil Aviation immediately before such date shall vest in respondent 1 and all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Central Government immediately before such date shall be deemed to have been incurred, entered into and engaged to be done by, with or for respondent 1. This sub-section also says that all non-recurring expenditure incurred by the Central Government for or in connection with the purposes of the airport up to the appointed date and declared to be capital expenditure by the Central Government shall be treated as the capital provided by the Central Government to respondent 1 and all sums of money due to the Central Government in relation to the airport immediately before the appointed date shall be deemed to be due to respondent 1. Respondent 1 is also given the power to institute or continue all suits and other legal proceedings instituted or which could have been instituted by or against the Central Government for any matter in relation to the airport and every employee holding any office under the Central Government immediately before the appointment date solely or mainly for or in connection with the affairs of the airport shall be treated as on deputation with respondent 1. Sub-section (1) of Section 12 also enacts similar provisions with regard to the air navigation services and the buildings used exclusively for such services immediately before the appointed date. The functions of respondent 1 are specified in Section 16 : sub-section (1) provides that, subject to the rules, if any, made by the Central Government in this behalf, it shall be the function of respondent 1 to manage the airports efficiently and sub-section (2) casts an obligation on respondent 1 to provide at the airports such services and facilities as are necessary or desirable for the efficient operation of air transport services and certain specific functions to be performed by respondent 1 are particularised in sub-section (3). These functions were, until the appointed date, being carried out by the Central Government but now under Section 16 they are transferred to respondent 1. Section 20 provides that after making provision for reserve funds, bad and doubtful debts, depreciation in assets and all other matters which are usually provided for by companies, respondent 1 shall pay the balance of its annual net profits to the Central Government. Section 21 requires respondent 1 to submit for the approval of the Central Government a statement of the programme of its activities during the forthcoming financial year as well as its financial estimate in respect thereof at least three months before the commencement of each financial year and Section 24 provides that the accounts of respondent 1 shall be audited annually by the Comptroller and Auditor-General and the accounts as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded to the Central Government and the Central Government shall cause the same to be laid before both Houses of Parliament. Respondent 1 is also required by Section 25 to prepare and submit to the Central Government, as soon as may be after the end of each financial year, a report giving an account of its activities during that financial year and this

report has to be laid before both Houses of Parliament by the Central Government. The officers and employees of respondent 1 are deemed by Section 28 to be public servants and Section 29 gives them immunity from suit, prosecution or other legal proceeding for anything in good faith done or intended to be done in pursuance of the Act or any rule or regulation made under it. Section 33 confers power to the Central Government to temporarily divest respondent 1 from the management of any airport and to direct respondent 1 to entrust such management to any other person. The Central Government is also empowered by Section 34 to supersede respondent 1 under certain specified circumstances. Section 35 gives power to the Central Government to give directions in writing from time to time on questions of policy and provides that respondent 1 shall, in the discharge of its functions and duties, be bound by such directions. Section 36 confers rule making power on the Central Government for carrying out the purposes of the Act and power to make regulations is conferred on respondent 1 under Section 37. Section 39 provides that any regulation made by respondent 1 under any of the clauses (g) to (m) of sub-section (2) of Section 37 may make it penal to contravene such regulation.

33. It will be seen from these provisions that there are certain features of respondent 1 which are eloquent and throw considerable light on the true nature of respondent 1. In the first place, the chairman and members of respondent 1 are all persons nominated by the Central Government and the Central Government has also the power to terminate their appointment as also to remove them in certain specified circumstances. The Central Government is also vested with the power to take away the management of any airport from respondent 1 and to entrust it to any other person or authority and for certain specified reasons, the Central Government can also supersede respondent 1. The Central Government has also to give directions in writing from time to time on questions of policy and these directions are declared binding on respondent 1. Respondent 1 has no share capital but the capital needed by it for carrying out its functions is provided wholly by the Central Government. The balance of the net profit made by respondent 1 after making provision for various charges, such as reserve funds, bad and doubtful debts, depreciation in assets, etc. does not remain with respondent 1 and is required to be paid over to the Central Government. Respondent 1 is also required to be paid over to the Central Government for its approval a statement of the programme of its activities as also the financial estimate and it must follow as a necessary corollary that respondent 1 can carry out only such activities and incur only such expenditure as is approved by the Central Government. The audited accounts of respondent 1 together with the audit report have to be forwarded to the Central Government and they are required to be laid before both Houses of Parliament. So far as the functions of respondent 1 are concerned, the entire department of the Central Government relating to the administration of airports and air navigation services together with its properties and assets, debts, obligations and liabilities, contracts, causes of action and pending litigation is transferred to respondent 1 and respondent 1 is charged with carrying out the same functions which were, until the appointed date, being carried out by the Central Government. The employees and officers of respondent 1 are also deemed to be public servants and respondent 1 as well as its members, officers and employees are given immunity for anything which is in goods faith done or intended to be done in pursuance of the Act or any rule or regulation made under it. Respondent 1 is also given power to frame Regulations and to provide that contravention of certain specified Regulations shall entail penal consequence. These provisions clearly show that every test discussed above is satisfied in the case of respondent 1 and they leave no doubt that respondent 1 is an instrumentality or agency of the Central Government and falls within the definition of 'State' both on the narrow view taken by the majority in Sukhdev v. Bhagatram (supra) as also on the broader view of Mathew, J., adopted by us.

34. It is, therefore, obvious that both having regard to the constitutional mandate of Article 14 as

also the judicially evolved rule of administrative law, respondent 1 was not entitled to act arbitrarily in accepting the tender of respondents 4, but was bound to conform to the standard or norm laid down in paragraph 1 of the notice inviting tenders which required that only a person running a registered IInd Class hotel or restaurant and having at least 5 years' experience as such should be eligible to tender. It was not the contention of the appellant that this standard or norm prescribed by respondent 1 was discriminatory having no just or reasonable relation to the object of inviting tenders, namely, to award the contract to a sufficiently experienced person who would be able to run efficiently a IInd Class restaurant at the airport. Admittedly the standard or norm was reasonable and non-discriminatory and once such a standard or norm for running a IInd Class restaurant should be awarded was laid down, respondent 1 was not entitled to depart from it and to award the contract to respondents 4 who did not satisfy the condition of eligibility prescribed by the standard or norm. If there was not acceptable tender from a person who satisfied the condition of eligibility, respondent 1 could have rejected the tenders and invited fresh tenders on the basis of a less stringent standard or norm, but it could not depart from the standard or norm prescribed by it and arbitrarily accept the tender of respondents 4. When respondent 1 entertained the tender of respondents 4 even though they did not have 5 years' experience of running a IInd Class restaurant or hotel, it denied equality of opportunity to others similarly situate in the matter of tendering for the contract. There might have been many other persons, in fact the appellant himself claimed to be one such person, who did not have 5 years' experience of running of IInd Class restaurant, but who were otherwise competent to run such a restaurant and they might also have competed with respondents 4 for obtaining the contract, but they were precluded from doing so by the condition of eligibility requiring five years' experience. The action of respondent 1 in accepting the tender of respondents 4, even though they did not satisfy the prescribed condition of eligibility, was clearly discriminatory, since it excluded other persons similarly situate from tendering for the contract and it was also arbitrary and without reason. The acceptance of the tender of respondents 4 was, in the circumstances, invalid as being violative of the equality clause of the Constitution as also of the rule of administrative law inhibiting arbitrary action.

35. Now, on this view we should have ordinarily set aside the decision of respondent 1 accepting the tender of respondents 4 and the contract resulting from such acceptance but in view of the peculiar facts and circumstances of the present case, we do not think it would be a sound exercise of discretion on our part to upset that decision and void the contract. It does appear from the affidavit filed by the parties that the appellant has no real interest in the result of the litigation, but has been put up by A. S. Irani for depriving respondents 4 of the benefit of the contract secured by them. We find that a number of proceedings have been instituted for this purpose from time to time by A. S. Irani either personally or by instigating others to take such proceedings. The first salvo in the battle against respondents 4 was fired by K. S. Irani, proprietor of Cafe Excelsior, who filed a suit challenging the decision of respondent 1 to accept the tender of respondents 4 but in this suit he failed to obtain an interim injunction and his appeal was dismissed by the High Court on October 19, 1977. It is significant that when the tenders were opened in the office of the Airport Director, Cafe Excelsior was represented by A. S. Irani which shows that either Cafe Excelsior was a nominee of A. S. Irani or in any event K. S. Irani, proprietor of Cafe Excelsior, was closely connected with A. S. Irani. Moreover, it is interesting to note that though the tender of respondents 4 was accepted as far back as April 19, 1977, K. S. Irani did not adopt any proceedings immediately but filed the suit only after A. S. Irani was informed by the Airport Director on August 22, 1977 that a final order has been received from the Ministry requiring A. S. Irani to immediately close down his restaurant and snack bars. It is also a circumstances not without significance that A. S. Irani did not immediately take any proceeding for challenging the acceptance of the tender of

respondents 4, but filed a suit in his own name only after the appeal of K. S. Irani was dismissed by the High Court on October 19, 1977. These circumstances clearly indicate that the suit was filed by K. S. Irani at the instance of A. S. Irani or in any event in concert with him and when the suit of K. S. Irani failed to achieve the desired result, A. S. Irani stepped into the arena and filed his own suit. This suit was for a mandatory injunction seeking removal of the two snack bars which had in the meantime been put up by respondents 4 pursuant to the acceptance of their tender by respondent 1. But in this proceeding also A. S. Irani failed to obtain an ad interim injunction. It was only after the failure to obtain interim relief in these two proceedings, one by K. S. Irani and other other by A. S. Irani, that the appellant filed the present writ petition in the High court of Bombay challenging the decision of respondent 1 to accept the tender of respondents 4. Now, it appears from the record that the appellant was at the material time conducting a restaurant called Royal Restaurant and Store which was owned in partnership by three persons, namely, J. K. Irani, K. M. Irani and G. S. Irani. G. S. Irani is the brother of A. S. Irani and he was managing and looking after the restaurant of A. S. Irani at the airport. It would, therefore, be a fair inference to make that the appellant was well connected with A. S. Irani and from the manner in which proceedings with a view to thwarting the attempt of respondents 4 to obtain the benefit of their contract, have been adopted one after the other in different names it does appear that the appellant has filed the writ petition at the instance of A. S. Irani with a view to helping him to obtain the contract for the restaurant and the snack bars. It is difficult to understand why the appellant should have waited until November 8, 1977 to file the writ petition when the tender of respondents 4 was accepted as far back as April 19, 1977. The explanation given by the appellant is that he was not aware of the acceptance of the tender of respondents 4 but that its a rather naive explanation which cannot be easily accepted. It is not possible to believe that the appellant who was so well connected with A. S. Irani and G. S. Irani did not know that A. S. Irani had filed to obtain the contract for running the restaurant and the snack bars and that this contract had been awarded to respondents 4 as a result of which A. S. Irani was being passed to close down his restaurant and snack bars. We have grave doubts whether this writ petition was commenced by the appellant bona fide with a view to protecting his own interest. Moreover, the writ petition was filed by the appellant more than five months after the acceptance of the tender of respondents 4 and during this period, respondents 4 incurred considerable expenditure aggregating to about Rs. 1,25,000 in making arrangements for putting up the restaurant and the snack bars and in fact set up the snack bars and started running the same. It would now be most inequities to set aside the contracts of respondents 4 at the instance of the appellant. The position would have been different if the appellant had filed the writ petition immediately after the acceptance of the tender of respondents 4 but the appellant allowed a period of over five months to elapse during which respondents 4 altered their position. We are, therefore, of the view that this is not a fit case in which we should interfere and grant relief to the appellant in the exercise of our discretion under Article 226 of the Constitution.

36. We accordingly dismiss the appeal and confirm the order of the High Court rejecting the writ petition. But in the circumstances of the case there will be no order as to costs throughout.

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